IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.642 of 2006.

Date of Decision: 18th August, 2006.

Abhishek. Petitioner.

Versus

H.P. University and others. Respondents.

Coram

The Hon'ble Mr. Justice V.K.Gupta, C.J.

The Hon'ble Mr. Justice Surjit Singh, J.

Whether approved for reporting[1]?

For the petitioner: Mr. Sandeep Kaushik, Advocate.

For the respondent: Mr. V.D. Khidtta, Advocate, for respondents No.1 and 2.

V.K.Gupta, C.J. (Oral).

Respondent No.3 has been served but despite service no one appears on her behalf.

A grave injustice appears to have been done against the petitioner in this case, blatantly and brazenly violating the petitioner's right vesting in him under Article 14 of the Constitution of India by apparently by gross misuse of the official position of the respondents.

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

The petitioner and respondent No.3, both admittedly being eligible candidates in all respects had applied for admission in the Department of Journalism and Mass Communication (Bachelor Degree Course) in the reserved category of "outstanding cultural activists". The basis of admission has been prescribed in Clause 7A.3 of the Hand Book of Information which clearly lays down that the admission to the Course will be made strictly on the basis of marks obtained in the entrance test and interview would be open to all persons etc. etc. For ready reference Clause 7A.3 is reproduced hereunder which reads thus:-

"7A.3 Basis of Admission & Reservation:

The admission to the course will be made strictly on the basis of marks obtained in the entrance test and interview shall be open to all persons irrespective of race, creed, caste or class subject to the reservations approved by the university. The merit will be determined on the basis of written examination to be conducted by the H.P. University, Shimla. The entrance test shall consist of one paper of 100 marks and of 1 hour duration and shall include three sections viz.

(i) General Knowledge and Current Affairs: 30 marks.

(ii) English Comprehension: 30 marks

(iii) Media Awareness: 40 marks

(iv) Interview (on the day of admission): 10 marks

Note: The minimum qualifying marks at the Entrance Test shall be 35 percentage (in case of SC/ST candidates the minimum qualifying marks shall be reduced until the fall SC/ST quota for admission has been exhausted).”

As far as the reservation quota qua the category of “outstanding cultural activists” is concerned, Clause 8.3 of the aforesaid Hand Book of Information lays down that admission against this quota at par with sports quota would only be made once in the beginning of the academic session and only such students would be eligible for admission against this quota who are having at least either 1st, 2nd or 3rd position in a Youth Festival in any item in any of the previous three years. Entire Clause 8.3 for ready reference is reproduced hereinbelow, which reads thus:-

“8.3 Rules for Admission for outstanding Cultural Activists:

1. Admission against outstanding cultural quota at par with sports quota would only be made once in the beginning of the academic session. No forms for such admission would be entertained after the expiry of the last date of the submission of forms for admission in the University.

2. Candidates who are employed are not eligible for admission against cultural quota in any of the courses.

3. Only those students will be eligible for admission against outstanding cultural quota who are having at least I, II and III position in Inter-College youth Festival in any item in any of the previous three years. Other things being equal preference will be given to those who have represented this university in inter-Varsity Festival.

4. While considering admissions against cultural quota only the following cultural items will be considered:

(1) Debate (2) Indian Folk Dance (3) Indian Classical Music (Vocal) (4) Indian Classical Music (Instrumental) (5) Light Vocal Music (6) Vadya Vadan (7) Group Singing (8) Indian Classical Dance (9) One Act Play/Short Play/Skit (10) Symposium (11) Poetic Symposium (12) Spot Painting and (13) Quizzing, Western Group Song, Western Solo, Rangoli, Clay, Modeling, Elocution, Poetic Recitation, Cartooning, Collage and Poster Making.

Note: The Distinction in the individual items will have Preference over the Team Items. The students seeking admission against outstanding cultural quota should also qualify the minimum eligibility condition for admission in that course provided under rules.

5. **For students who are given admission on cultural quota basis it will be compulsory for them to represent the Himachal Pradesh University in cultural activities.**

6. **Any student who without adequate reason is found to be avoiding his/her cultural activities, will be liable for disciplinary action leading to the cancellation of his/her admission.**

7. **In order to judge the suitability of the candidates for admission against cultural quota, trials would be held in the respective cultural item by a Committee comprising of Dean Students' Welfare (as Chairman) and two persons to be nominated by the Vice-Chancellor and the recommendations of the committee will be final. Original certificates would be seen by the committee at the time of trials."**

In para 5 of the writ petition, the petitioner's specific averment is that in the entrance test he obtained 65 marks whereas respondent No.3 obtained only 40 marks. This factual averment has not been disputed or denied by the respondents.

The reply filed by respondents 1 and 2, however, suggests that despite respondent No.3 having obtained lesser marks than the petitioner in the entrance examination she was admitted in the course, ignoring the superior and legitimate claim of the petitioner on the ground that the marks obtained by the candidates in the entrance test in terms of Clause 7A.3 (supra) does not determine the *inter se* merit of the candidates for admission to the Course, since (according to respondents No.1 and 2) merit is determined only on the basis of the marks/position obtained in the cultural test by invoking Clause 8.3 of the Hand Book of Information. This stand of respondents No.1 and 2 is reflected in para (7) of the Reply, which for ready reference we reproduce hereinbelow. It reads thus:

> **"In reply to this para, it is submitted that Clause 7A.3 of the Prospectus, deals with the basis of admission and reservation. It is admitted that the admission to the course has to be made strictly on the basis of marks obtained in**

> **the entrance test. However, it is made clear here that this criteria of entrance test applied to the category who are selected under the general seat, but as far as the admission to the cultural quota is concerned, Clause 8.3 of the Prospectus is applicable. For the selection under the sports/cultural quota, marks in the entrance test is only qualifying marks and thereafter merit in the sports/cultural activity is seen and final selection is made. In case, two students get equal position under the criteria of cultural/sports quota, in that eventuality, Clause 14 and 14.1 applies. In the present case, the replying respondent has accordingly selected respondent No.3 under the cultural quota. As such, the contention of the petitioner cannot be accepted that in terms of Clause 7.3 admission to the Degree Course is to be strictly made on the basis of the marks obtained in the entrance test."**

To say the very least, the aforesaid stand of respondents No.1 and 2 is wholly untenable, apart from it being totally absurd. Para 8.3 (supra) does not at all lay down any parameter nor does it prescribe any guideline for determining the *inter se* merit of the candidates applying under the category of "outstanding cultural activists". This para only relates to the determination of eligibility

criterion for submitting applications under this category by the intending candidates. All that it says is that the candidates fulfilling the prescribed eligibility criteria (mentioned therein) alone are eligible to apply. Its plain reading clearly suggests that a candidate who does not fulfill the eligibility criteria prescribed therein is not eligible to apply.

Petitioner and respondent No.3 both, on the admission of respondents No.1 and 2 being eligible to apply in terms of Clause 8.3 (supra), and they having crossed the first hurdle of fulfilling the eligibility criteria, *inter se* merit of all the candidates, including the petitioner and respondent No.3, was to be determined only and only on the basis of the marks obtained in the entrance test. We have absolutely no manner of doubt in our minds that there was no other method which was either permissible or available for determining the *inter se* merit of the candidates. We reiterate that the only method available and the methodology prescribed for determining the *inter se* merit was the marks obtained in the entrance examination under Clause 7A.3 (supra). Clause 8.3 (supra) did not lay down or prescribe any method or methodology for determining the *inter se* merit of the candidates. It only laid

down and prescribed the eligibility criteria. Once the candidates crossed the basic hurdle of fulfilling the eligibility criteria, all of them being equal and similarly placed, recourse had to be had to Clause 7A.3 for determining their *inter se* merit. There was no escape to it. Since the petitioner had obtained higher marks than respondent No.3, there was no question of resolving any tie between the two of them and hence there was no question of invoking para 14 of the Hand Book of Information.

Reliance placed upon sub-clause (7) of Clause 8.3 (supra) with respect to the conduct of trials is totally out of context because a plain reading of sub-clause (7) clearly suggests that the trials could or would be held in respective cultural items by the Committee only in order to judge the "suitability" of the candidates for admission against the category of "outstanding cultural activists". This Clause does not in any manner suggest that in or during these trials the merit or the *inter se* merit of the appearing candidates would be judged. Only their suitability has to be judged because there can be situations in the contemplation of the authorities where, despite a candidate producing a certificate and claiming eligibility on

that basis, the Committee may not find a candidate suitable and therefore sub-Clause (7) prescribes for conducting of the trials for judging the suitability of the candidates.

The argument that in terms of sub-clause (7) of Clause 8.3 (supra) merit is determined, arrived at and finally decided on the basis of trials conducted by the Committee is not only misconceived but appears to be based on a pure fallacy and a total misreading of sub-clause (7). As has been noticed in the earlier part of this judgment this ground also finds a mention, as a ground of defence in para (7) of the reply filed by respondents No.1 and 2. The stand taken therein is that even though candidates belonging to the reserved categories of sports persons as well as "outstanding cultural activists" do take the entrance test under Clause 7A.3 (supra), that is only for the limited purpose of "determining qualifying marks" but thereafter *inter se* merit is determined on the basis of the trials conducted under sub-clause (7) (supra). When we say that the argument is misconceived as well as fallacious, we have to clearly understand the methodology available by a harmonious reading and a proper construction of Clause 7A.3 and sub-clause (7) of Clause 8.3

(supra). We have already held that on its plain reading, sub-clause (7) of Clause 8.3 (supra) is invoked to conduct the trials perhaps of such candidates who despite producing the Certificates of having performed in the cultural events, in the opinion of the Committee have doubtful antecedents and, therefore, trials are conducted to remove and set at rest these doubts and, in such situations, or otherwise also, to judge the suitability of the candidates. By its very definition, sub-clause (7) does not prescribe any methodology whereby the *inter se* merit can be determined merely on the basis of the trials. Actually, no methodology can conceivably be prescribed to determine the *inter se* merit of the candidates merely on the basis of the trials.

The reason for taking this view is that the candidates belonging to the aforesaid two reserved categories of sports persons and "outstanding cultural activists" are also made to take the entrance test in terms of Clause 7A.3 along with all other candidates. We do not agree with the contention of respondents No.1 and 2 as has been made out in para (7) of the reply that taking of the entrance test is only for "determining the qualifying marks". Our clear view and firm opinion

is that the purpose of taking the entrance test is to judge the *inter se* merit of the appearing candidates on the basis of the marks obtained in the said entrance test. Such candidates, who are found suitable after undergoing trials under sub-clause (7) (supra) and who naturally take entrance test, out of such candidates only such candidate(s) are entitled to be admitted in the Course who possess higher merit in the entrance test than others.

Another factor which dissuades us from accepting the aforesaid interpretation placed by respondents No.1 and 2 upon sub-clause (7) (supra) is that determining *inter se* merit on the basis of the entrance test alone is the most objective and fair method of doing so, whereas determining *inter se* merit on the basis of the trials conducted under sub-clause (7) is fraught with all dangers of subjectivity, misuse, arbitrariness and whimsical adoption of criteria, apart from it being impracticable as well as unfeasible. Adopting the latter course of action would not only patently violate Article 14 of the Constitution of India but would also negate the spirit behind it. As is well known, Article 14 strikes at arbitrariness and does not approve of such methods of selection which have

a potential of subjectivity and misuse of power or authority.

On another facet also we cannot agree with the contention that under sub-clause (7) of Clause 8.3 *inter se* merit of the candidates is determined. Once again, based on the principle emanating from Article 14 we find that sub-clause (7) and for that matter no other part of Clause 8.3 lays down any guideline whereby a mechanism is said to have been evolved for determining the *inter se* merit of the candidates undergoing the trials. In the absence of clear, unambiguous, categorical and objective guidelines, which have to pass the test of scrutiny on the touch stone of Article 14, no one can be permitted to contend that the trials by themselves can lead to the determination of *inter se* merit of the appearing candidates. Judged from any point of view and looked at from any angle, the contention of respondents No.1 and 2 based upon their interpretation of sub-clause (7) of Clause 8.3 cannot at all be accepted by this Court.

We, therefore, totally disagree with the aforesaid contention of respondents No. 1 and 2 and hold in clear and unequivocal terms that the only method of determining *inter se* merit of candidates, including such candidates who belong to the

aforesaid reserved categories, is by subjecting them to the entrance test under Clause 7A.3 and determining their *inter se* merit in the said entrance test on the basis of marks obtained by them therein and thereat. No other method of determining *inter se* merit is permissible under the Scheme as is presently available.

For the foregoing reasons, this writ petition is allowed. The admission of respondent No.3 is quashed and set aside. Consequently, the petitioner possessing higher and superior merit than respondent No.3, is ordered to be admitted in the aforesaid Course in the aforesaid reserved category.

Because the petitioner has been driven to this avoidable litigation, therefore, we award costs of Rs.10,000/- in his favour which shall be paid by respondent No.1 to the petitioner within two weeks from today.

The petition is allowed and disposed of.

CMP No.1064 of 2006.

In view of the disposal of the writ petition, this application shall stand disposed of.

(V.K. Gupta), C.J.

18th August, 2006 (Surjit Sigh), J.
(tr).